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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

FBS Wireless Corporation  
WFBS(AM)  
Berwick, Pennsylvania

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File No. EB-02-PA-140

NAL/Acct. No. 200232400007

FRN: 0006-7296-02  
0006-7445-51

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: August 12, 2002**

By the District Director, Philadelphia Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that FBS Wireless Corporation ("FBS"), the licensee of WFBS(AM), Berwick, Pennsylvania, has apparently violated Sections 17.4(a), 17.51(a), and 73.49 of the Commission's Rules (the "Rules").<sup>1</sup> These violations occurred as a result of FBS' failure to register the WFBS(AM) antenna structure; failure to exhibit red obstruction lighting on the WFBS(AM) antenna structure; and failure to enclose the WFBS(AM) antenna structure with an effective locked fence. We conclude that FBS is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. On March 19, 2002 at 11:20 a.m., FCC agent David Dombrowski of the Enforcement Bureau's Philadelphia Office inspected the WFBS(AM) antenna structure. During the inspection, the FCC agent requested Kevin Fennessy, the President of FBS, to demonstrate that the red obstruction lighting on the WFBS(AM) antenna structure was operating properly. However, Kevin Fennessy responded that the red obstruction lighting has not been operational since FBS acquired the station in February, 2000. The FCC agent also found that FBS failed to register the WFBS(AM) antenna structure with the Commission and that the gate to the fence surrounding the WFBS(AM) antenna structure was unlocked.

3. On April 24, 2002 at approximately 9:00 a.m., agent Dombrowski re-inspected the WFBS(AM) antenna structure. During the inspection, the FCC agent found that the WFBS(AM) antenna structure was still not registered with the Commission and the gate to the fence surrounding the WFBS(AM) antenna structure was unlocked.

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<sup>1</sup> 47 C.F.R. §§ 17.4(a), 17.51(a) and 73.49.

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4. On May 20, 2002, the Philadelphia Office issued a Notice of Violation to FBS Wireless Corporation for failure to register the WFBS(AM) antenna structure with the Commission, in violation of Section 17.4(g) of the Rules; failure to exhibit red obstruction lighting on the WFBS(AM) antenna structure, in violation of Section 17.51(a) of the Rules; and failure to enclose the WFBS(AM) antenna structure with an effective locked fence, in violation of Section 73.49 of the Rules.

5. On June 3, 2002, FBS submitted a response to the Notice of Violation acknowledging that the antenna structure was not registered with the Commission and that the obstruction lighting on the WFBS(AM) antenna structure had not been operational for ten years. FBS stated that it would immediately take actions to register the antenna structure and repair the obstruction lighting. However, FBS disputed that it is required to register the antenna structure with the Commission and maintain aeronautical marking and lighting. FBS stated that when it acquired the station the previous licensee represented that the antenna structure has an overall height above ground of 198 feet and does not require aeronautical marking and lighting.

6. In the response, FBS also acknowledged that the fence was unlocked and required improvements to effectively restrict access to the WFBS(AM) antenna structure. FBS stated that it made repairs to the fence by closing the 10-inch gap between the gate and the lock post, placing 10" of soil at the entrance of the tower base and installing a new chain and lock.

### III. DISCUSSION

7. Section 17.4(a) of the Rules requires that effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission. The WFBS(AM) license BR-3502 specifies that the overall height of the WFBS(AM) antenna structure is 203 feet above ground. Because the antenna structure has an overall height greater than 200 feet above ground, it required a notice of proposed construction to the FAA and registration with the Commission. However, the WFBS(AM) antenna structure was unregistered from at least March 19, 2002 to June 17, 2002. Although FBS disputed that the WFBS(AM) antenna structure has an overall height of 203 feet above ground and requires registration with the Commission, it never provided the Commission with any evidence to the contrary.

8. Section 17.51(a) of the Rules requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. The WFBS(AM) license BR-3502 specifies that the WFBS(AM) antenna structure must exhibit red obstruction lighting at night. On March 19, 2002, the red obstruction lighting on the WFBS(AM) antenna structure was not functioning. FBS admitted in its response dated June 3, 2002 that the obstruction lighting has not been operational for ten years. Although FBS disputed that the WFBS(AM) antenna structure has an overall height of 203 feet above ground and requires aeronautical marking and lighting, it never provided the Commission with any evidence to the contrary.

9. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed with effective locked fences or other enclosures. On March 19, 2002 and April 24, 2002, the gate to the fence surrounding the WFBS(AM) antenna structure was unlocked.

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10. Based on the evidence before us, we find that FBS willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 17.4(a), Section 17.51(a) and 73.49 of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),<sup>4</sup> sets the base forfeiture amount for FBS' failure to exhibit red obstruction lighting at \$10,000, for FBS' failure to register the antenna structure with the Commission at \$3,000 and for FBS' failure to maintain an effective locked fence at \$7,000.

In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,<sup>5</sup> (the "Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a twenty thousand dollar (\$20,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> FBS Wireless Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000) for failing to exhibit red obstruction lighting on the WFBS(AM) antenna structure; failure to register the WFBS(AM) antenna structure with the Commission; and failure to maintain an effective locked fence around the WFBS(AM) antenna structure.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, FBS Wireless Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111 and 0.311.

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Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232400007 and FRN: 0006-7296-02/0006-7445-51.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232400007 and FRN: 0006-7296-02/0006-7445-51.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to FBS Wireless Corporation., 114 North Market Street, Berwick, Pennsylvania 18603.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes  
District Director  
Philadelphia Office

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<sup>8</sup> See 47 C.F.R. § 1.1914.